Gondola Motor Credit Sdn Bhd v Almurisi Holdings Sdn Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-255-90
HARUN HASHIM AND JEMURI SERJAN SCJJ AND WAN YAHYA J
3 SEPTEMBER 1992

Land Law *— Charge — Indefeasibility of interest — Indefeasible interest of registered chargee not defeated by any dealing subsequent to and with notice of charge*

Land Law *— Indefeasibility of title and interests — Judicial sale — Interest of purchaser at judicial sale, through indefeasible interest of registered chargee, not defeated by any dealing subsequent to and with notice of charge*

Land Law *— Sale of land — Application for removal of caveat — Registered owner entered into sale and purchase agreement of land with respondent — Existing registered charge on land — Private caveat entered by respondent purchaser — Judgment in default for specific performance and/or damages for breach of contract obtained by respondent against registered owner of land — Order for sale of land obtained by registered chargee for non-payment of principal sum and interest — Appellant successful purchaser of land at public auction pursuant to order for sale — Certificate of sale issued by court to appellant — Whether respondent's caveat should be allowed to remain — Validity of agreement — Whether appellant's certificate of sale may be registered — National Land Code 1965 ss 256(3), 259(3), 267, 340(1) & (2)*

Tanjung Petri Enterprise Sdn Bhd ('Tg Petri') was the registered owner of a piece of land in Johore Bahru ('the land'). The land was charged to Singapore Finance Ltd ('SFL') in November 1981. In June 1985, Tg Petri entered into a sale and purchase agreement of the land with the respondent ('the agreement'), of which one Shaikh Mohamad ('Shaikh') was a director. Shaikh was prior to the agreement a director of Tg Petri. A deposit on the purchase price was paid and received by Tg Petri and the purchase was to be completed on or before 31 August 1985. In January 1986, the respondent's solicitors wrote to the solicitors for Tg Petri referring to negotiations between their respective clients in November 1985 and giving Tg Petri one month to deliver the title deed to the respondent as agreed failing which they were at liberty to commence legal proceedings against Tg Petri for specific performance and/or alternatively for damages for breach of contract. In March 1986, the respondent entered a private caveat on the land and in September 1986 the respondent took out a writ against Tg Petri for specific performance and/or alternatively damages for breach of contract. A judgment in default of defence was obtained in February 1987 against Tg Petri. Meanwhile SFL, as chargee, applied for an order for sale of the land for non-payment of the principal sum and interest under s 256 of the National Land Code 1965 ('the Code'). The court made an order for sale in May 1987 and the property was sold at a public auction on July 1989 to the appellant who was subsequently issued a certificate of sale by the court under

A s 259 of the Code in November 1989. The certificate of sale, however, could not be registered due to the existence of the respondent's caveat. The appellant thus applied to the court for the removal of the caveat and the registration of the certificate of sale. The application was dismissed in the High Court and the appellant appealed.

B **Held**, allowing the appeal:

(1) SFL, as chargee, held an indefeasible interest in the land (by virtue of s 340(1) of the Code) upon registration of the charge in its favour. Under s 256(3) of the Code, on an application to the court for an order for sale by the chargee, it is mandatory on the C court to order the sale unless it is satisfied of the existence of cause to the contrary. No such cause to the contrary arose in this case when the order for sale was made. A successful purchaser at the public auction pursuant to an order for sale under s 256(3) was entitled to a certificate of sale under s 259(3) of the Code. Such a certificate was issued to the appellant. Accordingly, all the D requirements of the law have been complied with for the appellant to be registered as the new owner of the land.

(2) The purported revival of the agreement in January 1986; the entry of the caveat in March 1986; the filing of the suit in September 1986 and allowing the judgment in default in February 1987, E smacks of collusion between Tg Petri and the respondent to protect the personal interests of the directors of Tg Petri, past and present.

(3) In the circumstances of the case, the only relief available to the respondent is damages in lieu of specific performance which is what they prayed for and obtained in their suit against Tg Petri. F The purpose of the caveat is to protect the interests of the respondent in the land pending the trial of the 1986 suit. With the default judgment obtained in that suit, there is in fact and law no longer any justification for the caveat to remain on the register.

(4) At all material times the option to purchase and the agreement G were subject to the registered charge. Shaikh was a director of Tg Petri and in turn a director of the respondent and was well aware of the existence of the charge on the land. Any dealing subsequent to the charge and with notice of the charge, as here, cannot defeat the indefeasible interest of the registered chargee and through him the purchaser at a judicial sale.

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[Bahasa Malaysia summary

Tanjung Petri Enterprise Sdn Bhd ('Tg Petri') adalah tuan punya berdaftar sekeping tanah di Johor Bahru ('tanah itu'). Tanah itu telah digadaikan kepada Singapore Finance Ltd ('SFL') pada November I 1981. Pada Jun 1985, Tg Petri telah mengikat suatu perjanjian jual-beli tanah itu dengan penentang ('perjanjian itu'), yang mana Shaikh Mohamad ('Shaikh') adalah pengarahnya. Shaikh sebelum perjanjian itu adalah pengarah Tg Petri. Wang cengkeram atas harga pembelian

itu telah dibayar dan diterima oleh Tg Petri dan pembelian itu sepatutnya diselesaikan pada atau sebelum 31 Ogos 1985. Pada January 1986, peguamcara penentang telah menulis surat kepada peguamcara Tg Petri merujuk kepada perundingan antara klien mereka masing-masing pada November 1985 dan memberi Tg Petri satu bulan untuk menyerahkan suratikatan hakmilik kepada penentang seperti yang dipersetujui, sekiranya tidak diserahkan mereka berkebebasan untuk memulakan prosiding undang-undang terhadap Tg Petri untuk pelaksanaan spesifik dan/atau sebagai alternatif untuk ganti rugi kerana kemungkiran kontrak. Pada Mac 1986, penentang telah memasukkan suatu kaveat persendirian atas tanah itu dan pada September 1986 telah mengeluarkan suatu writ terhadap Tg Petri untuk pelaksanaan spesifik dan/atau sebagai alternatif ganti rugi kerana kemungkiran kontrak. Suatu penghakiman ingkar pembelaan telah diperoleh pada Februari 1987 terhadap Tg Petri. Sementara itu SFL, sebagai pemegang gadaian, telah memohon untuk perintah penjualan tanah itu kerana jumlah utama dan bunga tidak dibayar di bawah s 256 Kanun Tanah Negara 1965 ('Kanun itu'). Mahkamah telah membuat suatu perintah penjualan pada Mei 1987 dan tanah itu telah dijual di lelong awam pada Julai 1989 kepada perayu yang telah kemudiannya diberi suatu sijil penjualan oleh mahkamah di bawah s 259 Kanun itu pada November 1989. Sijil penjualan itu, akan tetapi, tidak dapat didaftar kerana kewujudan kaveat penentang itu. Perayu oleh kerana itu memohon kepada mahkamah untuk penghapusan kaveat itu dan pendaftaran sijil penjualan itu. Permohonan itu telah ditolak oleh Mahkamah Tinggi dan perayu membuat rayuan.

Diputuskan, membenarkan rayuan itu:

(1) SFL, sebagai pemegang gadaian, mempunyai kepentingan yang tidak boleh disangkal dalam tanah itu (mengikut s 340(1) Kanun itu) apabila gadaian itu didaftarkan memihak kepadanya. Di bawah s 256(3) Kanun itu, atas suatu permohonan kepada mahkamah untuk perintah penjualan oleh pemegang gadaian, adalah mandatori bagi mahkamah untuk memerintah penjualan itu kecuali ia berpuas hati tentang kewujudan sebab sebaliknya (cause to the contrary). Tiada sebab sebaliknya sedemikian timbul di dalam kes ini apabila perintah penjualan itu dibuat. Seorang pembeli yang berjaya di lelong awam mengikut suatu perintah penjualan di bawah s 256(3) berhak kepada suatu sijil penjualan di bawah s 259(3) Kanun itu. Sijil seperti itu telah dikeluarkan kepada perayu. Oleh itu, semua keperluan undang-undang telah dipatuhi untuk perayu didaftar sebagai tuan punya baru tanah itu.

(2) Kebangkitan semula perjanjian itu pada Januari 1986; kemasukan kaveat pada Mac 1986; pemfailan guaman pada September 1986 dan membenarkan penghakiman ingkar pada Februari 1987 ada unsur pakat-sulit antara Tg Petri dan penentang untuk melindungi kepentingan peribadi pengarah Tg Petri, yang lalu dan yang sekarang ini.

(3) Dalam keadaan kes ini, cuma satu sahaja relief yang ada pada penentang iaitu ganti rugi sebagai ganti pelaksanaan spesifik yang mereka telah memohon dan memperoleh dalam guaman mereka terhadap Tg Petri. Tujuan kaveat itu ialah untuk melindungi kepentingan penentang dalam tanah itu sementara menanti perbicaraan guaman 1986 itu. Dengan memperoleh penghakiman ingkar di dalam guaman itu, pada hakikatnya dan dalam undang-undang tiada lagi sebarang justifikasi untuk kaveat itu ditinggalkan dalam daftar.

(4) Pada semua masa yang penting, opsyen untuk membeli dan perjanjian itu tertakluk kepada gadaian berdaftar itu. Shaikh adalah pengarah Tg Petri dan pula pengarah penentang dan sedar betul akan kewujudan gadaian atas tanah itu. Sebarang urusan selepas gadaian itu dan dengan notis tentang gadaian itu, seperti di sini, tidak boleh mengalahkan kepentingan pemegang gadaian berdaftar yang tidak boleh disangkal dan melaluinya pembeli di penjualan kehakiman.]

Notes

For cases on application for removal of caveat in sale of land, see 8 *Mallal's Digest* (4th Ed) paras 1838–1840.

Cases referred to

1 *Macon Engineers Sdn Bhd v Goh Hooi Yin* [1976] 2 MLJ 53 (folld)
2 *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 (folld)

Legislation referred to

National Land Code 1965 ss 256(3), 259(3), 267(1)(a), (b), 327(1), 340(1), (2)

Appeal from: Originating Motion No 25–35–1989 (High Court, Johore Bahru)

Haridas Menon (*Zainab Jan* with him) (*TK Lim & Co*) for the appellant.
Mohd Shariff bin Mohd Ali (*Shariff & Som*) for the respondent.

Cur Adv Vult

Harun Hashim SCJ (delivering the judgment of the court): Tanjung Petri Enterprise Sdn Bhd ('Tg Petri') became the registered owner of Lot No PTB 8647 Town of Johore Bahru on 29 October 1978. In December 1978, the land was charged to the Overseas Chinese Banking Corporation Ltd which charge was discharged on 29 October 1979. On the same day the land was charged to Asiavest Merchant Bankers, which charge was discharged on 12 April 1981. Finally on 2 November 1981, the land was again charged by Tg Petri to Singapore Finance Ltd which charge was registered on 15 November 1981 as security for the repayment of moneys due to Singapore Finance Ltd from Raymond Yong Kim Yoong of Singapore

amounting to S$1.1m with interest. The charge to Singapore Finance Ltd includes three other lands, viz Lot Nos PTB 8659, 8661 and 8666, all in the Town of Johore Bahru and registered in the name of Tg Petri.

Tg Petri was incorporated as a company in 1976 with the following subscribers:

(1) Shaikh Mohamad bin S Tahir of Kota Tinggi, Johore.
(2) Raymond Yong Kim Yoong of Beach Road, Singapore.
(3) Koh Kim Kuay of Kota Tinggi, Johore.

Shaikh Mohamad was a director of Tg Petri from the date of its incorporation until he resigned on 30 April 1985.

On 10 April 1980, Tg Petri granted an option to purchase Lot No PTB 8647 on which stood a 4-storey shop-house to Shaikh Mohamad at the purchase price of $199,750. The option was in writing and signed by its director, Raymond Yong. It stated that Shaikh Mohamad had paid a sum of $39,950 and that this sum will not be refunded should he fail to exercise the option within the option period. The option, however, was only exercisable after 1 April 1985 but before 30 May 1985 at 4pm by the payment of a further sum of $39,950 towards the purchase price. The balance of the purchase price was payable within three months of exercising the option. When Shaikh Mohamad resigned as director of Tg Petri on 30 April 1985, he had yet to exercise the option and the option remained unexercised on 30 May 1985.

On 29 June 1985, Tg Petri entered into a sale and purchase agreement with Almurisi Holdings Sdn Bhd ('Almurisi') of which Shaikh Mohamad was a director for the sale and purchase of Lot PTB 8647 at the purchase price of $199,750. Clause 1 of the agreement declared that a deposit of $79,900 had been paid and received by Tg Petri who was to execute a valid and registrable transfer of the said property in escrow which is to be kept by the purchaser's solicitor pending completion of the sale. The purchase was to be completed on or before 31 August 1985 by the purchaser paying the balance of the purchase price of $119,850. Failure to pay the balance would entitle Tg Petri to forfeit the sum of $19,975 and a sum of $59,925 shall be refunded by Tg Petri to the purchaser. Time shall be the essence of the agreement. Shaikh Mohamad signed the agreement on behalf of Almurisi. On 5 July 1985 Tg Petri issued a receipt for the sum of $41,075 in favour of Shaikh Mohamad as part payment of the purchase price and the payment was stated to be by way of contra. Taking this sum into account, a sum of $78,775 remained outstanding on 31 August 1985.

Four months later, on 5 January 1986, the solicitor for Almurisi addressed a letter to the solicitor for Tg Petri referring to negotiations between their clients in November 1985 to the effect that Tg Petri had agreed to release the title deed to Almurisi within one month. That month had passed. It further said that the transfer document had been adjudicated for stamp duty and was ready for registration. Almurisi was ready and able to pay the balance of the purchase price amounting to $78,775. It concluded by giving Tg Petri one month from 5 January 1986 to deliver the title deed failing which they were at liberty to commence legal proceedings against Tg

A Petri for specific performance and/or alternatively for damages for breach of contract. On 25 March 1986, Almurisi entered a private caveat on the land. On 1 April 1986 a further sum of $50,000 was paid by way of contra according to the receipt issued by Tg Petri.

On 8 September 1986, Shaikh Mohamad and Almurisi took out a writ against Tg Petri in Johore Bahru Civil Suit No 22–1158 of 1986 claiming specific performance and/or alternatively damages for breach of contract arising out of the 10 April 1980 option and the sale and purchase agreement of 29 June 1985. It said that a balance of $28,775 of the purchase price was still due. Pursuant to a summons-in-chambers dated 31 December 1986, Almurisi obtained a judgment in default of defence to the writ from the senior assistant registrar on 4 February 1987 and a further order that Tg Petri deliver the document of title to Almurisi. Shaikh Mohamad has been in possession of the property since 10 April 1980.

In Johore Bahru Originating Summons No 31–71–87, Singapore Finance Ltd as chargee applied for an order for sale in respect of Lot PTB 8647 for non-payment of the principal sum and interest despite repeated demands under s 256 of the National Land Code 1965 ('the Code'). The court made an order for sale on 25 May 1987. The property was eventually sold at a public auction on 2 July 1989 for the sum of $260,000. The successful bid was that of Gondola Motor Credit Sdn Bhd. On 7 November 1989, the senior assistant registrar issued the certificate of sale by the court under s 259 of the Code in favour of Gondola Motor Credit Sdn Bhd on full payment of the purchase price and delivered the issue document of title to the purchaser which has since remained in its possession. The certificate of sale, however, could not be registered because of the private caveat entered into by Almurisi. The fact of this aforesaid caveat was stated in the proclamation of sale as follows:

> Caveat: PTB 8647
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> Private caveat entered by Almurisi Holdings Sdn Bhd vide Caveat Serial No 681/86 Jilid No 228, Folio 26 dated 25 March 1986.

which also stated that the property was being sold subject to existing caveat.

On being unable to register the certificate of sale by the court and thereby to be registered as the owner of the land, Gondola Motor Credit Sdn Bhd ('the appellant') on 9 September 1989 applied to the court in Originating Motion No 25–35 of 1989 for the removal of the private caveat and registration of the certificate of sale citing Almurisi as the respondent. The learned judge dismissed the application. Hence this appeal.

In the court below it was argued that the option to purchase the subject land granted to Shaikh Mohamad was not bona fide as he was a director of Tg Petri with knowledge that the land was subject to a charge. The learned judge held he could not make a finding as to the bona fides of the transaction on the affidavit evidence before him. It was further argued that Shaikh Mohamad should have objected to the charge in favour of Singapore Finance Ltd being created in 1981 after the option had been granted to him

in 1980. As to this, the learned judge held no adverse inference could be drawn and accepted counsel's argument that in any event Shaikh Mohamad could not exercise the option until 1985. Finally, it was argued that the respondent should have intervened in these proceedings for the sale of the land under s 256 of the Code. On this point, the learned judge held that it was not necessary as the respondent's interest in the land was already protected by the caveat.

On the evidence before him, the learned judge held, on the authority of *Macon Engineers Sdn Bhd v Goh Hooi Yin*,[1] that the respondent was entitled to enter the caveat. He further held that a certificate of sale under s 259 of the Code until registration does not per se enhance the appellant's equitable interest acquired subsequent to the respondent's caveat so as to equal, let alone override the respondent's priority of interest established by the caveat. Finally the learned judge held:

> Although it is clear on the authorities (*Crosbie-Hill v Sayer* [1908]1 Ch 866; *Abigail v Lapin* [1934] AC 491 and *Zeno Ltd v Prefabricated Construction Co (Malaya) Ltd & Anor* [1967] 2 MLJ 104, to name a few) that one's prior equity can be defeated or postponed by some act or omission on one's part, I fail to see how the facts in this case can be considered to have rendered it inequitable for the respondent to insist on its priority against the applicant especially when the applicant purchased the said property subject expressly to the caveat. This motion is accordingly dismissed with costs.

In view of the course which this matter has taken, it is necessary to return to first principles. All references to sections hereafter are to the Code.

First, s 340(1) confers an *indefeasible interest* in the land on the chargee upon registration of the charge unless it is made defeasible by s 340(2) in cases of fraud, forgery or illegality which do not arise in the instant case. Thus Singapore Finance Ltd, as chargee, held an indefeasible interest in Lot PTB 8647 (the subject land) when the charge in its favour was registered on 15 November 1981.

Secondly, under s 256(3), on an application to court for an order for sale by the chargee, it is *mandatory* on the court to order the sale unless it is satisfied of the existence of cause to the contrary. No such cause to the contrary arose in this case when the order for sale was made.

Thirdly, s 259(3) provides that a successful purchaser at the public auction pursuant to an order for sale under s 256(3) is entitled to a certificate of sale. Such a certificate was issued in the instant case.

Fourthly, s 267 (in so far as it is relevant) provides the effect of such a sale and reads:

> (1) Any certificate of sale given to a purchaser under sub-section (3) of section 259 or sub-section (4) of section 265 in respect of any charged land or lease shall be treated for all the purposes of this Act as an instrument of dealing, and shall be registrable accordingly under Part Eighteen; and, upon the registration thereof —
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> (a) the title or interest of the chargor shall pass to and vest in the purchaser, freed and discharged from all liability under the charge in question and any charge subsequent thereto; and

A (b) subject to paragraph (a), and sub-section (2), the relevant provisions of Part Fourteen shall apply as if the chargor had transferred the land or lease to the purchaser in accordance with the provisions of that Part.

Up to this stage, all the requirements of the law have been complied with for the appellant to be registered as the new owner of the subject land. The B only impediment, it is contended, is the respondent's private caveat. The subject of private caveats has been exhaustively dealt with in *Eng Mee Yong & Ors v V Letchumanan*[2] and we do not find it necessary to discuss it at length here except to apply the law to the facts of this case.

Section 327(1) provides:

C Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.

The appellant in this case are clearly the *aggrieved body* having paid the full D purchase price for the land at a judicial sale and in possession of the certificate of sale and the issue document of title to the subject land. They have satisfied the test in *Eng Mee Yong*[2] where Lord Diplock said at p 215:

It is otherwise when the applicant under s 327 is someone other than the caveatee. He has no registered title to rely upon as prima facie evidence of his interest in the land. It is for him to begin by satisfying the court that there are E sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat.

The question is how effective is the respondent's caveat to prevent the registration of the certificate of sale acquired by the appellant? What then is F a caveat?

The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to the land, in an ordinary action brought by the caveator against the caveatee for that purpose. Their Lordships accept this as an apt analogy with its corollary that G caveats are available, in appropriate cases, for the interim protection of rights to title to land or registrable interest in land that are alleged by the caveator but not yet proved. Nevertheless their Lordships would point out that the issue of a caveat differs from the grant of an interlocutory injunction in that it is issued ex parte by the registrar acting in an administrative capacity without the intervention of the court and is wholly unsupported by any evidence at all. Unless there H were some speedy procedure open to the registered proprietor to get the caveat set aside in cases where the caveator's claim is baseless or frivolous or vexatious, the Torrens system of land registration and conveyancing, so far from giving certainty to title to land in Malaya, would leave the registered proprietor in a more precarious position as respects his powers of disposition of his land than an unregistered proprietor under English law. (Per Lord Diplock in *Eng Mee Yong*[2] I at p 214.)

It is clear from the authorities that a caveat cannot remain forever. Indeed under s 328 it will lapse at the expiry of six years from the time it took effect. In *Macon Engineers*,[1] Gill CJ said at p 54:

It would seem abundantly clear from the authorities that, so long as there is in existence a valid agreement for the sale of land, the purchaser is entitled to lodge a caveat to protect his rights under the contract and to sue for specific performance of the agreement.

Now, is there in this case a valid agreement for the sale of land in existence? The option of 10 April 1980 had clearly expired on 30 May 1985 when Shaikh Mohamad failed to exercise the option by then. The sale and purchase agreement between Tg Petri and the respondent is an entirely new agreement and had nothing to do with the option. Both the option to purchase and the sale and purchase agreement are in writing. There is no reference whatsoever in the sale and purchase agreement to the earlier option to purchase although an attempt was made to relate the two transactions in the suit for specific performance by the respondent against Tg Petri. The sale and purchase agreement itself had come to an end because of the failure to complete the purchase by 31 August 1985, although an attempt was made by the respondent to revive it in 1986. This attempt was the foundation to institute proceedings for specific performance against Tg Petri. That suit too has come to a finality by the judgment in default of defence as no steps have been taken by Tg Petri to set aside the default judgment. If there were serious issues to be tried, it had to be in that suit. It seems to us that the purported revival of the sale and purchase agreement in January 1986; the entry of the private caveat in March 1986; the filing of the suit in September 1986 and allowing judgment in default in February 1987, smacks of collusion between Tg Petri and the respondent to protect the personal interests of the directors of Tg Petri, past and present. The devices used here are simply to allow Shaikh Mohamad to remain in possession of the property in return for allowing the same property to be used by fellow Director Raymond Yong as security for his personal loan from Singapore Finance Ltd. Be that as it may, assuming that the sale and purchase agreement is valid and subsisting, by cl 1 of that agreement, Tg Petri agreed 'to sell the said property with vacant possession ... free from all registered encumbrances ...' which means that Tg Petri has to discharge the charge to complete the purchase. They have failed to do so and by cl 7 the respondent has the right to enforce specific performance which they did in the 1986 suit and obtained default judgment. These matters, however, are not the concern of the appellant and do not affect their rights and interests in the land in any way. In the circumstances of this case, the only relief available to the respondent is damages in lieu of specific performance which is what they prayed for and obtained in their suit against Tg Petri. The purpose of the caveat is to protect the interests of the respondent in the land pending the trial of the 1986 suit. With the default judgment obtained in that suit, there is in fact and law no longer any justification for the caveat to remain on the register.

At all material times, the option to purchase and the sale and purchase agreement were subject to the registered charge. Shaikh Mohamad was a director of Tg Petri and in turn a director of the respondent and was well aware of the existence of the charge on the subject land. In any event, the fact of registration of the charge is notice to all the world of its existence.

A Any dealing subsequent to the charge and with notice of the charge, as here, cannot defeat the indefeasible interest of the registered chargee and through him the purchaser at a judicial sale. The error in this case was to ignore the indefeasible title of the chargee and the continuous legal operation of the charge from the moment of its registration up to the completion of the judicial sale and the issue of the certificate of sale.

B For the reasons stated, we would allow the appeal with costs here and below. The order of the learned judge is set aside. We order the removal of the caveat. Deposit to be refunded to the appellant.

Appeal allowed.

C Reported by Prof Ahmad Ibrahim

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